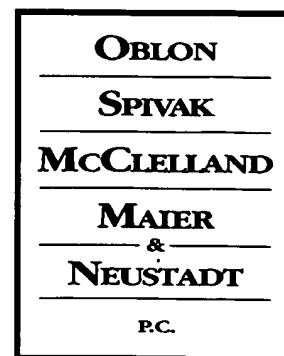




Docket No.: 231184US26



ATTORNEYS AT LAW

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 10/698,414
Applicants: Aline ABERGEL
Filing Date: November 3, 2003
For: PACKAGING DEVICE FOR A PRODUCT
INCLUDING A DETACHABLE APPLICATOR
Group Art Unit: 3732
Examiner: Doan, R.

SIR:


Attached hereto for filing are the following papers:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

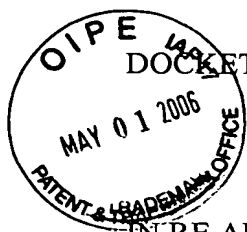

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DOCKET NO: 231184US26

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

ALINE ABERGEL :

EXAMINER: DOAN, R.

SERIAL NO: 10/698,414 :

FILED: NOVEMBER 3, 2003 :

GROUP ART UNIT: 3732

FOR: PACKAGING DEVICE FOR A
PRODUCT INCLUDING A
DETACHABLE APPLICATOR :

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action dated March 31, 2006, Species I, which the Office Action asserts corresponds to Figures 1-3, is elected with traverse. Accordingly, claims 1-9, 25-27, 29, 35, 42-47 and 49 are identified as reading on the elected species.

The outstanding requirement is traversed for several reasons.

First, the outstanding Office Action merely includes the conclusory statement that "[t]his application contains claims directed to the following patentably distinct species" without stating any basis whatsoever in support of such a finding. This is in violation of MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

In the absence of any annunciated basis, it is submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Further, MPEP § 806.04(f) requires:

Claims to be restricted to different species must be mutually exclusive.

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a basis for traversing the election of species requirement.

Finally, MPEP § 803 states:

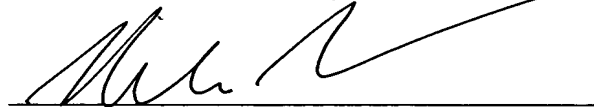
If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Accordingly, the outstanding requirement is traversed on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Therefore, it is requested that the requirement to elect a single species be withdrawn, and that claims 1-49 be examined on the merits.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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